

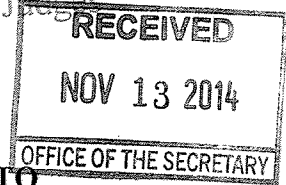
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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Office of Administrative
Law Judges

ADMINISTRATIVE PROCEEDING

File No. 3-16024



In the Matter of
ATP Oil & Gas Corp., *et al.*,
Respondents.

DIVISION OF ENFORCEMENT'S MOTION TO
NOT TREAT SHAREHOLDER LETTERS AS AN
ANSWER, MOTION FOR ENTRY OF FINALITY
ORDER, AND BRIEF IN SUPPORT

I. Motions

The Division of Enforcement, ("Division") pursuant to Rules 102(b) and 154(a) of the Commission Rules of Practice ("Rules of Practice"), hereby moves that the two letters sent to Judge Foelak by Douglas Meyer, dated August 26, 2014 and October 3, 2014, not be treated as an answer, because Mr. Meyer is not an officer of ATP Oil & Gas, Inc.

("ATPAQ") and therefore has no authority to represent the company in this proceeding. As explained below, because ATPAQ has not filed an answer or otherwise appeared in this proceeding after having been duly served, the Division further moves, pursuant to Rule of Practice 360(d)(2), for entry of an order declaring the decision of Judge Foelak, *ATP Oil & Gas Corp., Inc.*, Initial Decision No. 664, File No. 3-16024 (September 5, 2014) ("Initial Decision"), final.

II. Brief in Support

A. Statement of Facts

ATP is an involuntarily dissolved Texas corporation with a class of securities registered with the Commission pursuant to Section 12 of the Securities Exchange Act of

1934 (“Exchange Act”). Excerpts from Form 8-A-12G filed by ATP on January 25, 2001,¹ attached as Exhibit 1 to the Declaration of David S. Frye in Support of the Division of Enforcement’s Motion to Not Treat Shareholders Letters as an Answer and Motion for Entry of Finality Order (Frye Decl.); Printout from the Texas Secretary of State’s website dated November 6, 2014 (Frye Decl. Ex. 2). As of August 18, 2014, the common stock of ATPAQ was quoted on OTC Link, had nineteen market makers, and was eligible for the “piggyback” exception of Exchange Act Rule 15c1-11(f)(3). Printout from www.otcquote.com for ATPAQ printed on August 18, 2014. (Frye Decl. Ex. 3).

On March 3, 2014, the Commission’s Division of Corporation Finance (“Corporation Finance”) sent a delinquency letter by certified mail return receipt requested, to ATPAQ (“Delinquency Letter”). Delinquency Letter from Corporation Finance to ATPAQ, dated March 3, 2014, with returned receipt card showing delivery on March 6, 2014. (Frye Decl., Ex. 4.) The Delinquency Letter stated that ATPAQ appeared to be delinquent in its periodic filings and warned that it could be subject to institution of an Exchange Act Section 12(j) action without prior notice if it did not file its required reports within fifteen days of the date of the letter. The address, 4600 Post Oak Place, Suite 100, Houston, TX 77027 (“Post Oak Address”) was taken from ATPAQ’s most recent filing with the Commission at the time. ATPAQ Form 8-K, filed on January 31, 2014. (Frye Decl.

¹ The Division asks, pursuant to Rule of Practice 323, that the Court take official notice of this and all other information and filings on EDGAR referred to in this brief and/or filed as exhibits with the accompanying Declaration of David S. Frye. In order to reduce the volume of documents included in this submission, the Division has attached as exhibits excerpted copies of certain voluminous documents with just the cover page and relevant pages included. Only those documents (or excerpts thereof) which are unavailable on EDGAR are attached as exhibits. The Division will provide complete copies of any of these documents if requested by the Court or by the respondent.

Ex. 5). EDGAR printout of all filings by, or relating to, ATPAQ through November 12, 2014 (Frye Decl., Ex. 6). ATPAQ failed to respond to the delinquency letter. (Frye Decl. ¶4).

The Commission instituted this proceeding on August 20, 2014 based on the fact that ATPAQ was still delinquent in its periodic reports, having not filed a periodic report since it filed a Form 10-Q for the period ended March 31, 2012. Order Instituting Proceedings (“OIP”) at II-A-1. (Frye Decl. Ex. 6). As of August 20, 2014, ATPAQ’s last EDGAR filing of any kind was still the Form 8-K filed with the Commission on January 31, 2014, containing the Post Oak Address. (Frye Decl. Ex. 6). Therefore, the Office of the Secretary served the OIP on ATPAQ by Priority Mail Express, which was delivered to the Post Oak Address on August 21, 2014. Declaration of David S. Frye to Assist Secretary with Record of Service, at 2.

ATPAQ failed to file an answer in this proceeding or otherwise appear. On September 5, 2014, The Honorable Carol Fox Foelak issued the Initial Decision finding as follows: that ATPAQ had: 1) a class of securities registered under Exchange Act Section 12; 2) had violated Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder by failing to file its required periodic reports since it filed a form 10-Q for the period ended March 31, 2012; and 3) had failed to answer or otherwise appear in this proceeding. Based on the foregoing, Judge Foelak found, pursuant to Exchange Act Section 12(j), that it was necessary and appropriate for the protection of investors to revoke the registration of each class of securities registered under Exchange Act Section 12 and entered the Initial Decision to that effect. The Initial Decision was served by Certified Mail, Return Receipt Requested, and was signed for on September 12, 2014. (Frye Decl. Ex. 7).

Simultaneously with the institution of this proceeding, the Commission issued an order suspending trading in the securities of ATPAQ for ten business days. *ATP Oil & Gas Corp., et al.*, Exchange Act Rel. No. 72871, Commission File No. 500-1 (August 20, 2014).

ATPAQ is the subject of a pending bankruptcy proceeding in the United States Bankruptcy Court for the Southern District of Texas. *ATP Oil Corp.*, File No. 12-36187 (Bankr. S. D. Tex. August 17, 2012). That proceeding began as a Chapter 11 proceeding and was converted to a Chapter 7 proceeding on June 26, 2014. (Frye Decl. Ex. 8)

During the pendency of this proceeding, Judge Foelak's chambers received two letters from Douglas Meyer, dated August 26, 2014 (received by the ALJs offices on September 8, 2014) and October 3, 2014 (received by the ALJs offices on October 21, 2014) (Frye Decl. Exs. 9 and 10, respectively (collectively the "Shareholder Letters")). The Division's understanding is that the Shareholder Letters were forwarded to the Secretary's Office by Judge Foelak's staff, and the Secretary's Office then provided copies to the Division. Nowhere in the Shareholder Letters does Mr. Meyer purport to be an officer or director of, or an attorney for, ATPAQ: rather, he describes himself as a "holder of [ATPAQ] common shares and [ATPAQ] preferred shares." (Frye Decl. Exs. 9 at 1 and 10 at 1).

In the first letter, Mr. Meyer describes the bankruptcy proceeding as arising out of the Deepwater Horizon oil spill. (Frye Decl. Ex. 9 at 1). Mr. Meyer states that certain damage claims being pursued by ATPAQ might result in an ultimate payout to equity holders significantly above the amount needed to satisfy the claims of the company's creditors. He expresses his concern for the "due process rights" of the equity holders and proposes several means to protect those, including reconstituting the board of directors, which has been reduced to one member. (Frye Decl. Ex. 9 at 2).

B. Argument

a. Motion to Not Treat Shareholder Letters as an Answer

The Shareholder Letters should be stricken from the record or, at a minimum, not treated as an answer filed by ATPAQ, because Mr. Meyer has no power to represent ATPAQ in this proceeding. Rule of Practice 102(b) states that “[i]n any proceeding a person may be represented by an attorney at law admitted to practice before the Supreme Court of the United States or the highest court of any State (as defined in Section 3(a)(16) of the Exchange Act . . .) [and] a bona fide officer of a corporation, trust, or associate may represent the corporation, trust or association.” As he tacitly admitted in his first letter in calling on a new board to be appointed, he is neither an officer or director of ATPAQ and therefore has no power or authority to represent the company in this proceeding. *Exmocaré, Inc. (n/k/a Second Solar, Inc.), et al.*, Initial Decision Rel. No. 519, 2013 SEC LEXIS 3578 at *2 (November 13, 2013) (holder of 30 million shares not permitted to answer on behalf of the company). As noted above, the corporation has an involuntarily dissolved status with the State of Texas and therefore, assuming *arguendo* that there were no other considerations, under Texas law, only an incumbent officer at the time of the dissolution has any authority to act on behalf of the company unless that status changes. TEX. REV. STAT. §11.357(a) (2014). After a series of resignations in January 2014, the sole remaining officer of ATPAQ was Mr. James Latimer, the Chief Restructuring Officer. ATPAQ Form 8-K filed with the Commission on January 31, 2014. (Frye Decl. Ex. 5 at 3). As further noted, the Division is relying on actual service of the OIP and the Initial Decision, not constructive service on the company pursuant to Rule of Practice 141(a)(2)(ii). Thus, there can be no argument that the company lacked actual notice of this proceeding.

In any case, looming over Meyer's attempt to intervene on behalf of ATPAQ is the pending Chapter 7 proceeding. If anyone has the duty to protect the interests of the ATPAQ bankruptcy estate in any recovery of damages relating to the Deepwater Horizon oil spill, it is the Chapter 7 trustee of the bankruptcy estate. 11 U.S.C. §704 (2014). In light of this fact, and out of an abundance of caution, the Division contacted counsel for the Chapter 7 trustee and emailed him copies of all the key documents in this proceeding, including the Order Instituting Proceedings, the Initial Decision, and the Shareholder Letters. (Frye Decl. Ex. 11) By letter dated November 11, 2014, (Frye Decl. Ex. 12) trustee's counsel advised the Division that "[i]n the exercise of the Trustee's business judgment, the Trustee has determined that there is no value to [ATPAQ's (the "Company's")] chapter 7 estate to try satisfy the requirements to maintain the Company's registration of its public securities. Accordingly, the Trustee has no intention to appear in the Administrative Proceeding or take any action to prevent the revocation of the registration of the Company's public securities." *Id.*

Finally, the fears expressed by Meyer concerning the possible impact of this proceeding on the "due process" rights of the shareholders of ATPAQ are ill-founded. ATPAQ will continue to be whatever sort of entity it was prior to revocation. Revocation of the company's securities registration will not diminish the rights of the shareholders to any damage recovery, whether within or outside of the bankruptcy proceeding, nor will it in any way affect the trustee's ability to fulfill his duties to the ATPAQ bankruptcy estate. In addition, revocation will serve the important purpose of ending any possible manipulation of the market for, or fraud in the trading of, ATPAQ's securities based on the bankruptcy proceeding.

b. Motion for Entry of Finality Order

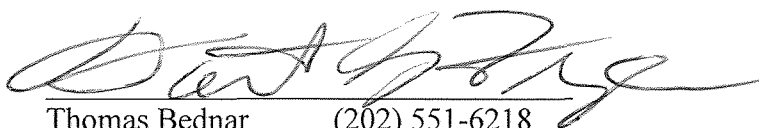
As shown, service of the OIP and the Initial Decision was perfected by actual delivery to the last address shown in ATPAQ's last Commission filing. The time for filing an answer elapsed with no filing by the company, as did the time for filing a petition for review of the Initial Decision. Therefore, pursuant to Rule of Practice 360(d)(2), the Division moves for entry of Notice that the Initial Decision has become final.

III. Conclusion

For the reasons set forth above, the Division respectfully moves, pursuant to Commission Rule of Practice 102(b), that the Commission strike the Shareholder Letters from the record or, in the alternative, not treat the Shareholder Letters as an answer. Because no Petition for Review of the Initial Decision has been filed within the allotted time, the Division further moves that the Commission enter a Notice that Initial Decision has become final pursuant to Rule of Practice 360(d)(2).

Dated: November 13, 2014

Respectfully submitted,



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COUNSEL FOR
DIVISION OF ENFORCEMENT

CERTIFICATE OF SERVICE

I hereby certify that true copies of the Division Of Enforcement's Motion Strike Shareholder Letters From The Record, Motion For Entry Of Finality Order, Brief In Support, and Declaration of David S. Frye in Support thereof, and Exhibits thereto, were served on the following on this 13th day of November, 2014, in the manner indicated below:

By Hand:

The Honorable Carol Fox Foelak
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-2557

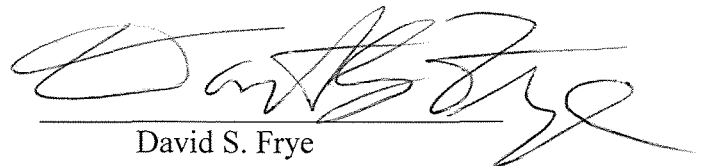
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